

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 1135 OF 2001

In

SPECIAL CIVIL APPLICATION NO. 2458 OF 1999

With

CIVIL APPLICATION NO.10507 OF 2001

In LETTERS PATENT APPEAL NO. 1135 OF 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

- =====
- 1 Whether Reporters of Local Papers may be
allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the
fair copy of the judgment ?
 - 4 Whether this case involves a substantial
question of law as to the interpretation of
the constitution of India, 1950 or any
order made thereunder ?
 - 5 Whether it is to be circulated to the civil
judge ?

=====

MOHANBHAI RAMJIBHAI KERATRA - Appellant

Versus

SURENDRANAGAR DISTRICT PANCHAYAT - Respondent

=====

Appearance :

MRS. D.T. SHAH for Appellant

MR. H.S. MUNSHAW for Respondent

=====

**CORAM : HONOURABLE MR.JUSTICE R.S.GARG &
HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

Date : 05/07/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Heard the learned Counsel for the parties.
2. The factual matrix for disposal of the present appeal is that the appellant, Mohan Ramjibhai, was appointed on 21st May, 1983, and was stopped from work with effect from 21st June, 1986; he made a Reference to the Labour Court that his removal was violative of Section-25(G) of the Industrial Disputes Act. The Labour Court decided against the interest of the petitioner, therefore, the petitioner came to this Court in Special Civil Application No.6436 of 1996, which was dismissed on 30th July, 1997. Being aggrieved by the said judgement, the present appellant preferred Letters Patent Appeal No.1419 of 1997. The Division Bench of this Court, in its judgement, observed that there were no violations of the provisions of Section-25(F) of the Act, however, the Division Bench found that the question of Section-25(G) and its applicability required reconsideration. The matter was remitted to the Labour Court for a fresh decision. The Labour Court, thereafter, made its award on 16th October,

1998 in Reference (LCS) No.50 of 1998 holding that there was violation of Section-25(G) of the Act, it accordingly ordered reinstatement of the appellant with 60% back-wages.

Being aggrieved by the said award, the Establishment, namely, Surendranagar District Panchayat, filed Special Civil Application No.2458 of 1999. The same came to be allowed by the learned single Judge on 18th August, 1999, therefore, the aggrieved labour/workman is before this Court under Clause-15 of the Letters Patent.

3. Learned Counsel for the appellant vehemently submitted that the learned single Judge committed factual, so also legal, error in not appreciating the provisions of Section-25(G) of the Act. Her submission is that in application of Section-25(G), the last man should go first and the first man should go last. Her submission is that the date of appointment is the material date and not the date of discharge. Her submission, in fact, is that two persons, namely, Kalubhai Kanjibhai and Bijal Bababhai, admittedly, were engaged on 21st March, 1984, therefore, they would certainly be the juniors to the petitioner, who was engaged with effect from 21st May, 1983.

4. Learned Counsel for the respondent, however, supported the judgement of the learned single Judge, but, was unable to dispute the factual position that these two persons were engaged subsequent to the engagement of the petitioner. He, however, submitted that if the learned single Judge has interfered in the matter, then, the Court should not interfere in the appeal.

5. From the Annexure-A appended to the Letters Patent Appeal, a document, which is said to have been issued by the Executive Engineer, Panchayat Department, Surendranagar, it would clearly appear that the petitioner - Mohan Ramjibhai and one Rupaben Melabhai came to be appointed on 21st May, 1983; the petitioner, Mohan Ramjibhai, is shown at Serial No.1, while Rupaben is shown at Serial No.2. It would also appear that the other two employees, namely, Kalubhai Kanjibhai and Bijal Bababhai, came to be appointed on 21st March, 1984. The facts, in fact, have not been disputed by the other side and the learned single Judge has correctly recorded the date of appointment.

6. Section-25(G) of the Act reads as under:

"25-G. Procedure for retrenchment - Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman."

A fair understanding of Section-25(G) would make it clear that in absence of any agreement between the employer and the workman in relation to retrenchment, the employer shall ordinarily retrench the workman, who was the last person to be employed in the category, unless for reasons to be recorded, the employer retrenches any other workman. The provisions of law clearly say that in case, retrenchment has become inevitable, the person, who was last employed, is to be retrenched first. The requirement is to see that who came in the employment at the end of the total employment, that is, who was

last to join the services.

7. In the present matter, the two employees, Kalubhai Kanjibhai and Bijal Bababhai, came to be employed with effect from 21st March, 1984. If that be so and the action of retrenchment was inevitable, then, any person junior to the petitioner ought to have been retrenched. The learned single Judge appears to have committed a legal mistake in observing that as Rupaben was working right from 1984 to 1994, she would not be junior to the petitioner. The list submitted by the Executive Engineer would make it clear that the petitioner is shown at Serial No.1, while Rupaben is shown at Serial No.2. The learned single Judge also did not properly appreciate the legal provisions while observing that the other two employees would not become junior to the petitioner because they came to be appointed before the petitioner was discharged. In the opinion of this Court, the date of discharge of the petitioner would not make the other two senior to him. It is the date of the appointment which would make an employee

senior or junior.

8. In the present case, admittedly, the petitioner was at least senior to those persons, namely Kalubhai Kanjibhai and Bijal Bababhai, therefore, he could not be retrenched. The learned single Judge, in our considered opinion, did not properly appreciate the provisions contained in Section-25(G) of the Act. The judgement by the learned single Judge in Special Civil Application No.2458 of 1999 dated 18th August, 1999 is hereby set aside and that of the Labour Court, Surendranagar in Reference (LCS) No.50 of 1998 dated 16th October, 1998 is restored.

9. Taking into consideration the totality of the circumstances, we are of the opinion that in a case like present, where the Establishment is required to pay the back-wages for 19 years, award of 60 % back-wages would be on the higher side. The same are, therefore, reduced to 50%. It is, however, expected of the respondent-Establishment that within a period of six weeks from today, they will reinstate the

petitioner and within a period of four months they shall make payment of the back-wages. To the extent indicated above, the appeal is allowed. No costs.

10. Consequently, the Civil Application is also rejected.

Direct Service is allowed.

[R.S.Garg, J.]

[Ravi R.Tripathi, J.]

*kamlesh**